IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 932 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARAB SALABHAI MOHMADBHAI

Versus

LUHAR NAROTTAM KESHAVJI DECD. THROUGH HIS HEIRS AND L.RS.

Appearance:

MR KK SHAH for Petitioners

MR NAGIN N GANDHI for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/09/2000

ORAL JUDGEMENT

This Civil Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 is directed against the judgment and decree passed by the Joint District Judge, Bhavnagar in Regular Civil Appeal No.5 of 1984 in favour of the present respondents-original landlord.

2. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the supreme Court while dealing with the revisions arising under Section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai (1998(2) GLH 736 = AIR 1998 SC 3325), while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri (AIR 1987 SC 1782), held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible. Keeping in mind the above principles laid down by the Apex Court, I would decide this Civil Revision Application.

3. The short facts are that the present respondents-original plaintiffs filed a Regular Civil Suit No.280 of 1980 in the Court of Joint Civil Judge(J.D.) at Mahuva against the present petitioners-original defendants for eviction of the suit premises and for arrears of rent on the ground of tenant in arrears, subletting and permanent change in structures. The learned Civil Judge (J.D.) dismissed the suit of the plaintiffs for eviction and partly decreed the suit for arrears of rent. Against that, original plaintiffs-landlord preferred Regular Civil Appeal No.5 of 1984 in the Court of District Judge, Bhavnagar and it was transferred for deciding the same on merits to the Court of learned Joint District Judge, Bhavnagar. After hearing the learned advocates appearing for the respective parties, the learned Joint District Judge, Bhavnagar vide order dated 4-7-1987 allowed the appeal and judgment and decree passed by the trial Court dismissing the suit for eviction of the suit shop premises were set aside and the defendants therein were ordered to hand over the vacant and peaceful possession of the suit premises to the appellants therein on or before 31st October, 1987 which is giving rise to the present Civil Revision Application.

4. Initially notice was issued vide order dated 12-10-1987. Ad-interim relief which was granted by the lower court was continued. Thereafter, vide order dated

3-2-1988 rule was issued and interim relief granted earlier was also continued. Today, the matter has come up for hearing before this Court.

5. During the pendency of this Civil Revision Application, as both the respondents died, respondent nos.1(A) to 1(D) were added as heirs of respondent no.1 and respondent nos.2(A) to 2(C) were added as heirs of respondent no.2 vide order dated 9-3-1999 passed by this Court in Civil Application No.3549 of 1998 in Civil Revision Application No.932 of 1987.

6. I have heard learned advocate for the petitioners Mr.K.K.Shah and learned advocate for the respondents, Mr.Nagin N. Gandhi. I have also gone through the reasoned orders passed by the Courts as well as the evidence and record shown to me by the learned advocates appearing for the respective parties.

7. The learned Joint District Judge has passed the decree in favour of the original plaintiff only on the ground of subletting and, therefore, the parties have restricted their arguments only on that issue. Mr.K.K.Shah has mainly argued that as per the rent note Ex.29, suit property was let out to present appellant-original defendant nos.1 and 2 and thereafter, appellant no.2 has retired from the partnership firm and in his place, appellant no.4 has been inducted as a partner. He has also argued that original defendant no.1 has never parted with the possession of the property in question, but from very beginning he remained in possession of the property. The defendant no.4, who has got technical knowledge, was inducted as partner in the firm, but exclusive possession was never handed over to him and, therefore, question of subletting does not arise in this case. He has further argued that defendant no.1 is an agriculturist and he is doing agricultural work in the nearby village of Mahuva and he used to visit the suit shop once or twice in two months for the purpose of collecting his profit as a partner. Initially defendant no.1 used to sit there in the suit shop.

7.1 Mr.Shah has relied upon the case reported in 1993(1) GLR page 193 para 12. He has also relied upon the case reported in 1986 SC 1564 more particularly para (A). Another judgment relied upon by the learned advocate for the petitioner is reported in 1974 SC 280 more particularly paras 5,6 and 8. Further he has relied upon the case reported in 1987 (2) GLR 960. Relying upon the aforesaid reported judgments, he has argued that the law is settled on the subject and what is

required to be seen while deciding the question of subletting is whether the entire possession or part thereof has been handed over to the other person. If it has been proved, then question of subletting can be proved. According to him, here in this case, he has never parted with the possession of the suit shop in question and, therefore, question of subletting does not arise.

8. Learned advocate for the respondent Mr.Gandhi has taken me to paras 8 and 9 of the Regular Civil Appeal No.5 of 1984 and argued that each and every aspect of the matter has been taken into consideration by the Joint District Judge while deciding the above appeal. He has drawn my attention towards the findings given in the above appeal by the Court below that it is the case of the present appellants from very beginning that appellant no.4 has been inducted into the suit shop as a partner and according to him, no Partnership Deed came to be produced to that effect by the appellants before the Court below and no books of accounts have also been produced to prove their contention that the appellant no.4 is a partner of appellant no.1. According to him, only the bare words of the parties before the Court below are not sufficient to substantiate the contention.

9. After going through the oral evidence of the parties and the cross-examination, Court below has rightly come to the conclusion that though the appellants have contended that appellant-original defendant no.4 has been inducted into the partnership firm as a partner, the same has not been established by the present appellants before the Court below. Unless some cogent and convincing evidence are produced by the present appellants to establish their case, the truthfulness of the contention of the appellants that defendant no.4 has been inducted into the partnership as a partner cannot be believed. Court below has dealt with the same at pages 8 and 9 in paragraphs 11 and 12 of the said judgment by coming to the conclusion on the appreciation of the evidence of the original defendant No.1 which has been recorded at Ex.45. The bare words of the appellant nos.1 and 4 that they were partners and appellant no.4 has been inducted into the partner as a partner in the partnership firm are not sufficient to turtle the balance. It has been established that appellant no.1 is not staying in Mahuva. It appears that he is an agriculturist and doing agricultural work in his native village. Merely on oral evidence he says that he is coming to Mahuva for the purpose of collecting his profit, but on what basis and in what manner have not been described and brought on

record.

10. As far as the judgments upon which reliance is placed by the learned advocate for the appellants, there cannot be any dispute regarding the principles enunciated in those judgments. But facts remain that if somebody comes out with a particular defence, then it is their duty to prove the case before the Court below when they had opportunity to do so. Whereas in this case, the defendants have failed to prove their defence, but the plaintiffs are able to establish their case by proving that the premises in question have been sub-let to the defendant No.4 and, therefore, the aforesaid judgments will not come in rescue of the appellants.

11. Having regard to the facts and circumstances of the case and also in view of the judgment of Patel Valmik Himatlal (supra), this Civil Revision Application is required to be rejected and is accordingly rejected. Rule is discharged. Interim relief granted earlier by this Court stands vacated. Present appellants are directed to hand over vacant and peaceful possession of the suit premises to the present respondents on or before 31st of December, 2000.

(R.P.DHOLAKIA,J.)

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